Supreme Court, U.S.
FILED
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(7)

No. 06-102

IN THE

Supreme Court of the United States

SINOCHEM INTERNATIONAL CO., LTD.,

Petitioner,

v.

MALAYSIA INTERNATIONAL SHIPPING CORP.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

JOINT APPENDIX

STEPHEN M. HUDSPETH
6 Glen Hill Road
Wilton, CT 06897
(203) 762-2846

PETER J. WANG
Z. ALEX ZHANG
JONES DAY
30th Floor
Shanghai Kerry Center
1515 Nanjing Road West
Shanghai 200040
People's Republic of China
(86)(21) 2201-8000

Counsel for Petitioner

GREGORY A. CASTANIAS
(Counsel of Record)
VICTORIA DORFMAN
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3939

Counsel for Petitioner

ANN-MICHELE G. HIGGINS
KEVIN L. MCGEE
(Counsel of Record)
RAWLE & HENDERSON LLP
One S. Penn Square, 16th Floor
The Widener Building
Philadelphia, PA 19107
(215) 575-4200

Counsel for Respondent

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20001

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United States District Court
Eastern District of Pennsylvania (Philadelphia)
CIVIL DOCKET FOR CASE #: 2:03-cv-03771-TON

Date Filed	#	Docket Text
06/23/2003	1	COMPLAINT against SINOCHEM INTERNATIONAL CO. LTD. (Filing fee $ 150 receipt number 892960.), filed by MALAYSIA INTERNATIONAL SHIPPING CORPORATION.(ti,) (En-tered: 06/23/2003)
06/23/2003		One Original Summons Issued as to SINOCHEM INTERNATIONAL CO. LTD. Forwarded To: Counsel on 6/23/03 (ti,) (Entered: 06/24/2003)
07/07/2003	2	AMENDED COMPLAINT against SINOCHEM INTERNATIONAL CO. LTD. , filed by MALAYSIA INTERNATIONAL SHIPPING CORPORATION.(ph,) (Entered: 07/08/2003)
07/07/2003		Summons Issued on amended complaint as to SINOCHEM INTERNATIONAL CO. LTD. Forwarded To: A. Higgins, Esq. on 7/8/03 (ph,) (Entered: 07/08/2003)
01/05/2004	3	MOTION TO DISMISS THE AMENDED COMPLAINT IN THIS ACTION, MEMORANDUM, DISCLO-SURE STATEMENT PURSUANT TO 7.1, DECLARATION OF LU MIN, CERTIFICATE OF SERVICE filed by SINOCHEM INTERNATIONAL CO. LTD..(ph,) (Entered: 01/05/2004)

Date Filed	#	Docket Text
01/05/2004		Letter to Attorney STEPHEN M. HUDSPETH, ESQ. re: L.R. 83.5 and 83.5.2. (ph,) (Entered: 01/05/2004)
01/06/2004	4	Declaration of Sun Dacheng, Certificate of Service. (DT) (Entered: 01/07/2004)
01/20/2004	5	Request for Extension of Time to File Response/Reply to *Defendant's Motion to Dismiss* filed by MALAYSIA INTERNATIONAL SHIPPING CORPORATION, Certificate of Service. (Attachments: # 1 Text of Proposed Order) (CARVELL, DIANE) Modified on 1/21/2004 (np). (Entered: 01/20/2004)
01/22/2004	6	ORDER THAT UPON REQUEST OF PLAINTIFF, IT IS ORDERED THAT THE TIME TO RESPOND TO DEFENDANT'S MOTION TO DISMISS IS EXTENDED THROUGH 2/2/04. SIGNED BY JUDGE FRANKLIN S. VAN ANTWERPEN ON 1/22/04. 1/23/04 ENTERED AND COPIES MAILED (ph,) (Entered: 01/23/2004)
01/22/2004		Set/Reset Deadlines as to [3] MOTION to Dismiss. RESPONSES DUE BY 2/2/2004. (ph,) (Entered: 01/23/2004)

Date Filed	#	Docket Text
02/02/2004	7	RESPONSE in Opposition re [3] MOTION to Dismiss *Amended Complaint* filed by MALAYSIA INTERNATIONAL SHIPPING CORPORATION, Certificate of Service. (Attachments: # 1 # 2 # 3 # 4) (HIGGINS, ANN-MICHELE) Modified on 2/4/2004 (np). (Entered: 02/02/2004)
02/04/2004	8	PLAINTIFF MALAYSIA INTERNATIONAL SHIPPING CORPORATION'S Corrected Response in Opposition to DEFENDANT'S MOTION TO DIS-MISS AMENDED COMPLAINT, Certificate of Service. (Attachments: # 1 Proposed Order # 2Bill of Landing # 3 Application # 4 Affirmation of Huang Ya Quan)(HIGGINS, ANN-MICHELE) Modified on 2/5/2004 (fh) (Entered: 02/04/2004)
02/06/2004	9	MOTION FOR LEAVE OF COURT TO FILE A REPLY BRIEF, MEMORANDUM, CERTIFICATE OF SERVICE filed by SINOCHEM INTERNATION-AL CO. LTD...(ph,) (Entered: 02/06/2004)
02/09/2004	10	ORDER THAT DEFENDANT'S MOTION FOR LEAVE OF COURT TO FILE A REPLY BRIEF IS GRANTED, THE REPLY BRIEF NOT TO EXCEED 12 PAGES AND TO BE SERVED NO LATER THAN 7 DAYS AFTER THE DATE OF ENTRY OF THIS ORDER. . SIGNED BY JUDGE FRANKLIN S. VAN ANTWERPEN ON 2/9/04.2/9/04

Date Filed	#	Docket Text
		ENTERED AND COPIES MAILED (ph,) (Entered: 02/09/2004)
02/17/2004	11	Reply Memorandum in support of its motion to dismiss the amended complaint, Declaration in support of reply memorandum, Certificate of service filed by SINOCHEM INTERNATIONAL CO. LTD.. (ph,) (Entered: 02/18/2004)
03/01/2004	12	MEMORANDUM AND ORDER THAT DEFENDANT'S MOTION TO DIS-MISS IS GRANTED AND THE CASE IS DISMISSED WITHOUT PRE-JUDICE TO PLAINTIFF'S RIGHT TO PROCEED ON THIS MATTER IN THE APPROPRIATE CHINESE ADMI-RALTY COURT. SIGNED BY JUDGE FRANKLIN S. VAN ANTWERPEN ON 2/27/04. 3/1/04 ENTERED AND COPIES MAILED . (stb,) Modified on 3/2/2004 (stb,). (Entered: 03/01/2004)
03/01/2004	13	Declarations in Support of Defendant's Reply Memorandum. Certificate of Service (stb,) (Entered: 03/01/2004)
03/15/2004	14	MOTION for Reconsideration filed by MALAYSIA INTERNATIONAL SHIPPING CORPORATION. Certificate of Service. (Attachments: # 1 Affidavit) (HIGGINS, ANN-MICHELE) (Entered: 03/15/2004)

Date Filed	#	Docket Text
03/15/2004	15	Memorandum in Support of motion for reconsideration, Certificate of service filed by MALAYSIA INTERNATIONAL SHIPPING CORPORATION. (ph,) Additional attachment(s) added on 3/17/2004 (mar,). (Entered: 03/16/ 2004)
03/25/2004	16	NOTICE OF APPEAL as to Order on Motion to Dismiss, by MALAYSIA INTERNATIONAL SHIPPING CORPORATION. Filing fee $ 255, receipt number 903430. Copies to Judge, Clerk USCA, Appeals Clerk and DIANE B. CARVELL (Attachments: # 1 exhibit a)(ph,) (Entered: 03/26/2004)
03/25/2004	17	Clerk's Notice to USCA re 16 Notice of Appeal: (ph,) (Entered: 03/26/2004)
03/25/2004	18	CERTIFICATE pursuant to FRAP 10(b)(1)(B) by DIANE B. CARVELL on behalf of MALAYSIA INTERNATIONAL SHIPPING CORPORATION re: no transcript will be ordered. (ph,) (Entered: 03/26/2004)
03/30/2004		NOTICE of Docketing Record on Appeal from USCA re 16 Notice of Appeal filed by MALAYSIA INTERNATIONAL SHIPPING CORPORATION. USCA Case Number 04-1816. (mar,) (Entered: 03/30/2004)

Date Filed	#	Docket Text
03/30/2004	19	Certified Copy of Order from USCA dated 3/30/04 that, it appearing that a timely post-decision motion of a type specified by FRAP 4(a)(4) is pending in the District Court, that the above-entitled appeal is stayed pending disposition of the motion. The parties are directed to file written reports addressing the status of the pending motion on 4/29/04 and every 30 days thereafter until the motion is determined. This stay does not apply to the obligation to pay filing and docketing fees. (mar,) (Entered: 03/30/2004)
03/31/2004	20	MOTION for Leave to File *Reply Brief* filed by MALAYSIA INTERNATIONAL SHIPPING CORPORATION. Certificate of Service. (Attachments: # 1 Text of Proposed Order)(CARVELL, DIANE) (Entered: 03/31/2004)
03/31/2004	21	Copy of TPO Form re 16 Notice of Appeal: (ph,) (Entered: 04/01/2004)
04/01/2004	22	Memorandum in Opposition to plaintiff's motion for reconsideration of the court's decision dismissing this action, Certificate of service filed by SINOCHEM INTERNATIONAL CO. LTD.. (ph,) Additional attachment(s) added on 4/16/2004 (ph,). (Entered: 04/02/2004)

Date Filed	#	Docket Text
04/02/2004		RECORD COMPLETE FOR PURPOSES OF APPEAL. (mdg,) (Entered: 04/02/2004)
04/05/2004	23	ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO FILE A REPLY BRIEF, PLAINTIFF SHALL HAVE UNTIL 4/7/04 TO FILE SAID REPLY BRIEF. . SIGNED BY JUDGE FRANKLIN S. VAN ANTWERPEN ON 4/5/04.4/5/04 ENTERED AND COPIES MAILED AND FAXED. (ph,) (Entered: 04/05/2004)
04/07/2004	24	PLAINTIFF MALAYSIA INTERNATIONAL SHIPPING CORPORATION'S Reply Brief in Support of its 14 MOTION for Reconsideration *with Certificate of Service*. (Attachments: # 1 Exhibit Translation of Guangdong Higher Court Ruling)(HIGGINS, ANN-MICHELE) Modified on 4/8/2004 (fh) (Entered: 04/07/2004)
04/14/2004	25	MEMORANDUM AND ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION. . SIGNED BY JUDGE FRANKLIN S. VAN ANTWERPEN ON 4/14/04.4/15/04 ENTERED AND COPIES MAILED (ph,) (Entered: 04/15/2004)
03/02/2006	26	ORDER of USCA DATED 2/7/06, that the judgment of the District Court entered 3/1/04, be, and the same is, hereby vacated and that the case is remanded for proceedings consistent

Date Filed	#	Docket Text
		with this opinion. Costs taxed against appellee. (mjo,) (Entered: 03/02/2006)
03/07/2006	27	ORDER THAT THIS CASE IS REASSIGNED FROM JUDGE FRANKLIN S. VAN ANTWERPEN TO JUDGE THOMAS N. ONEILL, JR FOR ALL FURTHER PROCEEDINGS. SIGNED BY CLERK OF COURT, MICHAEL E. KUNZ ON 3/7/06. 3/8/06 ENTERED AND COPIES MAILED AND E-MAILED.(le,) (Entered: 03/08/2006)
03/15/2006	28	Notice of Change of Address by STEPHEN M. HUDSPETH, Certificate of Service. (le,) (Entered: 03/15/2006)
09/27/2006	29	ORDER THAT THE CLERK OF COURT MARK THIS ACTION CLOSED FOR STATISTICAL PURPOSES AND PLACE THE MATTER IN THE CIVIL SUSPENSE FILE.. SIGNED BY JUDGE THOMAS N. ONEILL JR. ON 09/27/06. 09/28/06 ENTERED AND COPIES MAILED AND E-MAILED.(jjf,) (Entered: 09/28/2006)
10/02/2006	30	Notice of Change of Address by STEPHEN M. HUDSPETH, Esquire with Certificate of Service. (le,) (Entered: 10/02/2006)

General Docket
US Court of Appeals for the Third Circuit
No. 04-1816

Malaysia Shipping v. Sinochem Intl Co

Date	Entry
3/30/04	CIVIL CASE DOCKETED. Notice filed by Malaysia Shipping. [illegible] (lml)
3/30/04	CLERK ORDER - RULE 4(a)(4) Stay case pending disposition of post decision motion[s]. Status Report due 4/29/04. (lml)
3/30/04	Certified copy of order to Lower Court. (lml)
3/31/04	TRANSCRIPT PURCHASE ORDER (PART I), no proceedings in District Court. (lml)
4/8/04	APPEARANCE from Attorney Stephen M. Hudspeth on behalf of Appellee Sinochem Intl Co, filed. (lml)
4/8/04	(POSITIVE) DISCLOSURE STATEMENT on behalf of Appellee Sinochem Intl Co, filed. (lml)
4/9/04	APPEARANCE from Attorney Ann-Michele G. Higgins on behalf of Appellant Malaysia Shipping, filed. (lml)
4/9/04	(POSITIVE) DISCLOSURE STATEMENT on behalf of Appellant Malaysia Shipping, filed. (lml)
4/9/04	INFORMATION STATEMENT on behalf of Appellant Malaysia Shipping, received. (lml)
4/9/04	CONCISE SUMMARY OF CASE on behalf of Appellant Malaysia Shipping, received. (lml)
4/14/04	APPEARANCE from Attorney Diane B. Carvell on behalf of Appellant Malaysia Shipping, filed. (lml)
4/22/04	FINAL STATUS REPORT received from Stephen M. Hudspeth, Esq., counsel for Appellee Sinochem Intl Co. (lml)

4/22/04	COPY OF DECISION and ORDER of District Court dated 4/13/04 denying Plaintiff's motion for reconsideration, filed. (lml)
4/27/04	Appellee Sinochem Intl's Civil Appeal Information Statement, received. (lml)
10/5/04	CERTIFIED LIST filed. (lml)
10/5/04	BRIEFING NOTICE ISSUED. Appellant brief and appendix due 11/15/04. (lml)
11/4/04	Appellant Malaysia Shipping verbally granted an extension of time until 11/22/04 to file brief and appendix pursuant to LAR 31.4. (ghb)
11/10/04	Letter from Appellant Malaysia Shipping confirming extension of time pursuant to LAR 31.4 with service on opposing counsel. Service Date 11/9/04. (ghb)
11/22/04	ELECTRONIC BRIEF on behalf of Appellant Malaysia Shipping, Copies: 1, Pages: 45, Word Count: 9,579, delivered by mail, filed. Certificate of service date 11/22/04. Hard Copy Due (eh)
11/22/04	HARD COPY RECEIVED from Malaysia Shipping, 10 Copies. Hard Copy Due (lal)
11/22/04	APPENDIX on behalf of Appellant Malaysia Shipping Copies: 4, Volumes: 1, Delivered by mail, filed. Certificate of service date 11/22/04. (lal)
12/20/04	BRIEF on behalf of Appellee Sinochem Intl Co. Copies: 10, Pages: 45, Word Count: 10,684, delivered by mail, filed. Certificate of service date 12/20/04. (gpk)
12/23/04	LETTER dated December 20, 2004 on behalf of Appellee regarding missing page from appendix. The page is attached to the letter, received. ZZ#SEND ZZ#TO ZZ#MERITS ZZ#PANEL (gpk)
4/11/05	CALENDARED for Tuesday, June 7, 2005. (clr)

4/27/05 CLERK'S LETTER to counsel written at the direction of the Court advising counsel for Appellant to file a letter memorandum (original and 3 copies) by Tuesday, May 10, 2005, in response to the issue of the District Court's subject matter jurisdiction raised in notes 1 and 2 of the Appellee's brief. Response due by 5/10/05. (clr)

5/10/05 ANSWER/Letter Memorandum dated May 10, 2005, received from Ann-Michele G. Higgins, Esq., counsel for Appellant, addressing the issue of the District Court's subject matter jurisdiction raised in notes 1 and 2 of the Appellee's brief, submitted in direct response to the Court's request of April 27, 2005, filed. (clr)

5/16/05 CLERK'S LETTER to counsel written at the direction of the Court, counsel in the above captioned case are requested to file letter briefs by May 27, 2005, addressing whether, in light of ZZ_Gulf ZZ_Oil ZZ_Corp. ZZ_v. ZZ_Gilbert, 330 U.S. 501 (1947), and 15 Charles Alan Wright & Arthur R. Miller, ZZ_et ZZ_al., ZZ_Federal ZZ_Practice ZZ_& ZZ_Procedure ZZ_Section 3828 (2d ed. 1986), the District Court erred in failing to rule expressly whether it had personal jurisdiction over Sinochem Int'l Co., Ltd., before dismissing the action on the basis of ZZ_forum ZZ_non ZZ_conveniens. Response due by 5/27/05. (mac)

5/27/05 ANSWER/Letter Brief dated May 27, 2005, received via electronic transmission from Stephen M. Hudspeth, Esq., counsel for Appellee, Sinochem, addressing jurisdictional issues, in direct response to the Court's request of May 16, 2005, filed. (clr)

5/27/05 ANSWER/Letter Memorandum dated May 27, 2005, received via electronic transmission from

Ann-Michele G. Higgins, Esq., counsel for Appellant, addressing jurisdictional issues, in direct response to the Court's request of May 16, 2005, filed. (clr)

6/7/05 ARGUED Tuesday, June 7, 2005 Panel: Ambro, Stapleton, and *Alarcon, Circuit Judges. *(For the Ninth Circuit Court of Appeals, sitting by designation.) Counsel for Appellant: Ann-Michele G. Higgins and Counsel for Appellee: Stephen M. Hudspeth. (clr)

2/7/06 PRECEDENTIAL OPINION (Ambro, Authoring Judge, Stapleton, and *Alarcon, Circuit Judges), with separate dissenting opinion by Judge Stapleton, filed. Honorable Arthur L. Alarcon, Senior United States Circuit Judge for the Ninth Circuit Court of Appeals, sitting by designation. Total pages 53. (cmd)

2/7/06 JUDGMENT, It is ORDERED AND ADJUDGED by this Court that the judgment of the said District Court entered March 1, 2004, be, and the same is hereby VACATED and that the case is REMANDED for proceedings consistent with this opinion. Costs taxed against the appellee. All of the above in accordance with the opinion of this Court, filed. (cmd)

2/8/06 ORDER AMENDING OPINION (Ambro, Authoring Judge, Stapleton, *Alarcon, Circuit Judges), IT IS NOW ORDERED that the published Opinion in the above case filed February 7, 2006, be amended as follows: On page 30, last line of text, after "(Breyer, C.J.)(same)." add two spaces and insert the following text: "Stated differently, but with the same requirement of jurisdiction, we have held that the ultimate inquiry of forum non conveniens "is whether the retention of jurisdiction by the district court would best serve the convenience of

the parties and the ends of justice." Mobil Tankers Co. S.A. v. Mene Grande Oil Co. 363 F.2d 611, 613 (3d Cir. 1966); see also Hoffman v. Goberman, 420 F. 2d 423, 426 (3d Cir. 1970) (same).", filed. *Honorable Arthur L. Alarcon, Senior United States Circuit Judge for the Ninth Circuit Court of Appeals, sitting by designation. (cmd)

2/22/06 BILL OF COSTS by Appellant Malaysia Shipping, filed. Certificate of Service dated 2/21/06. (cmd)

3/1/06 MANDATE ISSUED, filed. (tmk)

3/1/06 RECORD released. (tmk)

3/2/06 MOTION by Appellee Sinochem Intl Co to file petition for rehearing out of time, filed. Answer due 3/16/06. Certificate of Service dated 3/1/06. (cmd)

3/13/06 ORDER (Ambro, Circuit Judge) The foregoing motion by Appellee for leave to file Petition for Rehearing En Banc out of time is granted, filed. (cmd)

3/13/06 PETITION by Appellee for rehearing en banc, filed. Certificate of service dated 3/1/06. (cmd)

3/23/06 ORDER AMENDING OPINION (Ambro, Authoring Judge, Stapleton, and *Alarcon, Circuit Judges), filed. *Honorable Arthur L. Alarcon, Senior United States Circuit Judge for the Ninth Circuit Court of Appeals, sitting by designation. (cmd)

3/23/06 ORDER (Scirica, Chief Judge, Sloviter, Roth, McKee, Rendell, Barry, Ambro, Authoring Judge, Fuentes, Smith, Fisher, *Stapleton and *Alarcon, Circuit Judges) denying Appellee Sinochem Intl Co. petition for en banc rehearing, filed. *Honorable Walter K. Stapleton, Senior Judge, is limited to panel rehearing vote only.

**Honorable Arthur L. Alarcon, Senior Judge, United States Court of Appeals for the Ninth Circuit, sitting by designation, is limited to panel rehearing vote only. (cmd)

6/12/06 U.S. Supreme Court order dated 6/8/06, at S.C. number: 05A1134, extending the time to and including July 21, 2006 in which to file a petition for writ of certiorari, filed. (ghb)

7/31/06 Supreme Court of U.S. notice filed advising petition for writ of certiorari filed by Appellee Sinochem International Company, LTD. Filed in the Supreme Court on 7/24/06 at Supreme Ct. case number: 06-102. (ghb)

10/2/06 U.S. Supreme Court order dated 9/26/06, at S.C. number: 06-102, granting petition for writ of certiorari by Appellee Sinochem International Co., Ltd.. filed. (ghb)

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

September 26, 2006

Mr. Gregory A. Castanias
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001

Re: Sinochem International Co., Ltd.
v. Malaysia International Shipping Corporation
No. 06-102

Dear Mr. Castanias,

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is granted.

Sincerely,

/s/

William K. Suter, Clerk

GUANGDONG HIGHER PEOPLE'S COURT,
THE PEOPLE'S REPUBLIC OF CHINA

Civil Ruling

(2004) Yue Gao Fa Li Min Zhong Zi No. 43

Appellant (i.e. the Defendant of the first instance): **Malaysia International Shipping Corporation Herbad,** with its address at 3rd floor, Wisma MISC, 2 Jalan Conlay, PO Box 10371, Kuala Lumpur, Malaysia, and with Mr. Dato Hj. Mohd. Ali Hj. Yasin, its Director, as its legal representative.

Appellee (i.e. the Plaintiff of the first instance): **Sinochem International Trading Co., Ltd.**, with its address at 18th Floor, Jim Mao Tower, 88 Century Boulevard. Shanghai, and with Mr. Shi Guoliang, its Chairman, as its legal representative.

[2nd] Defendant of the first instance: **Pan Ocean Shipping Co. Ltd.**, with its address at Daehan Fire & Marine Insurance Building, 51-1Namchang-Dong Chung-ku, Seoul 100-178, South Korea.

The Appellant has made its appeal to this Court against the *(2003) Guang Hai Fa Chu Zi No. 348* Civil Ruling rendered by Guangzhou Admiralty Court in respect of the proceeding which involved the Appellant, the Appellee and the [2nd] Defendant of the first instance with reference to alleged tort damages caused by backdating of a Bill of Lading. The Appellant claims:

1. The dispute involved in this case represents the dispute involved in the underlying shipping contract of the Bill of Lading. Therefore, the proceeding instituted by the Appellee on the basis of the Bill of Lading should have been bound by the Bill of Lading and the relationship under the relevant shipping contract, and thus the Appellee does not have the right to institute the proceeding by tort. The ruling of

the trial of first instance failed to determine the legality of the cause of action asserted by the Appellee and falsely ruled that the case would not be bound by the provisions of the cargo shipping contract evidenced by the Bill of Lading, which constituting an error both in ascertainment of facts and application of law.

2. The Bill of Lading whereby the Appellee has instituted the proceeding has the specific wording "..... used together with the Charter-party" and "shipper: Pan Ocean Shipping Co. Ltd." Apparently, as an integral part of the Bill of Lading, any agreements under the charter-party executed by Pan Ocean Shipping Co. Ltd. represents the agreements embedded in the Bill of Lading.

3. Article 48 of the Charter-party, which should have constituted a part of the Bill of Lading, provides "Any dispute arising from the Contract which cannot be resolved in a friendly manner shall be submitted to arbitration in London." Furthermore, the same Charter-patty includes provisions on the governing law (i.e. British law) and on matters such as arbitrators and arbitration rules (i.e. the London Maritime Arbitration Commission). Therefore, the dispute involved in the Bill of Lading should have been submitted to the London Maritime Arbitration Commission for arbitration, and the Appellee should not have instituted the proceeding with the Guangzhou Admiralty Court.

In addition, the Appellant has instituted an action at a local U.S. court on June 23, 2003 with respect to the dispute in question, and such U.S. court issued a summons to the Appellee on the same date. The Appellee had not instituted its proceeding with Guangzhou Admiralty Court until July 23, 2003 (with the Appellant to receive the Defending Notice and a copy of the Complaint serviced by Guangzhou

Admiralty Court), which is later than the date of the action started by the Appellant in the U.S. Accordingly, Guangzhou should not have accepted to try the case instituted by the Appellee in respect of the same matter. This Court is requested to order that the court of first instance does not have the jurisdiction over the case in question and to quash the proceeding commenced by the Appellee. The Appellee has made no pleading in respect of the appeal of the Appellant.

Through its investigation, this Court is of the opinion that the case in question is a case involving foreign parties and learned that the Guangzhou Admiralty Court has arrested the M/V Handy Roseland which had performed the shipping under the same case. Under Articles 19 of the *Special Maritime Procedural Law of the People's Republic of China,* and Article 243 of the *Code of Civil Procedure of the People's Republic of China,* the Guangzhou Admiralty Court has jurisdiction over this case. The ruling rendered by the trial of first instance, under which the objection raised by the Appellant as to the jurisdiction over the case in question be rejected is correct, will be affirmed by this Court. Since the Appellee has initially instituted its proceeding on the ground of the joint tort feasance of the two co-defendants, the jurisdiction involved in this case shall not be bound by the arbitration clauses of the Bill of Lading or the maritime cargo shipping contract. In addition, though the Bill of Lading includes the wording ".....used together with the Charter-party", such Bill of Lading failed to specify whether the Charter-party or its arbitration clauses will be consolidated. Therefore, it shall be determined that the Bill of Lading has failed to agree on any arbitration provisions. Given that the People's Republic of China and the U.S. are different sovereignties with different jurisdictions, whether the Appellant has taken actions at any U.S. court in respect of this case will have no effect on the exercise by a Chinese court of its competent jurisdiction over said case. Based on the foregoing, the appeal made by the Appellant is not justified on proper grounds and will thus not be supported by

this Court. In accordance with Articles 152 and 158 of the *Code of Civil Procedure of the People's Republic of China*, we hereby grant our ruling as follows:

The appeal be rejected and the ruling of the court of first instance affirmed; and

The Appellant be responsible for the payment of RMB50.00 as the charge for handling of the trial of second instance.

This Ruling shall be final.

Shi Shi, Chief Judge

Liu Menglang, Judge

Zhou Lanying, Acting Judge

(With seal of Guangdong Higher People's Court)

[Date eligible]

Tan Jujin, Clerk

Guangdon Provincial High Court
of the People's Republic of China

Civil Decision

Case No.: (2004) Yue Gao Fa Li Min Zhong Zi No. 43

Appellant (Defendant of first instance): Malaysia International Shipping Corporation Berhad

Add: 3rd floor, Wisma MISC, 2Jalan Conlay, PO. Box 10371, Kuala Lumpur, Malaysia

Legal representative: Dat'Hj. Hohd. Ali Hj: Yasin, Director

Appellee (Plaintiff of first instance): Sinochem International Co., Ltd.

Add: 18th floor, Jinmao Building, 88# Century Avenue, Pudong, Shanghai

Legal Representative: Shi Guo Liang, Chief Director

Defendant of first instance: Pan Ocean Shipping Co., Ltd.

Add: Daehan Fire & Marine Insurance Building, 51-1 Namchang – Dong Chung- ku, Seoul 100-178, South Korea

With respect to the case arising from the dispute over the liability for the tort of anti-dated bill of lading among the appellant Malaysia International Shipping Corporation Berhad (hereinafter referred to as the appellant), the appellee Sinochem International Co., Ltd., and the defendant of first instance Pan Ocean Shipping Co. Ltd., the appellant lodged an appeal to this court by virtue of disagreement of the *Civil Decision* under ref: (2003) Guang Hai Fa Chu Zi No. 348 issued by Guangzhou Maritime Court. The appellant claims that: 1: The dispute involved in this case concerns the relation of contract of carriage as presented in the bill of lading; the appellee lodged the lawsuit based on the bill of

lading, thus the bill of lading and the related relations of contract of carriage should be bounding to this case and the appellee should not be entitled to initiate the litigation based on tort. The *Civil Decision* of first instance, which did not examine the legitimacy of the basis on which the appellee lodged the case and judged that this case should not be bounded by the contract of carriage of goods by sea as presented in the bill of lading, is incorrect in either recognition of the facts or the application of law; 2. The bill of lading based on which the plaintiff brought the action clearly states that "to be used with charterparty" and "the name of the carrier: Pan Ocean Shipping Co. Ltd". It is obvious that the clauses in the charterparty signed by Pan Shipping Co. Ltd. as part of the bill of lading can be deemed as the clauses agreed on the bill of lading; 3. Article 48 of the charterparty incorporated into the bill of lading aforementioned states: "All disputes arising out of this contract which cannot be amicably resolved shall be referred to arbitration in London." The charterparty has also reached the agreement on the law to be applied (English Law), the arbitrators and the rules for arbitration (London Maritime Arbitration Committee). Therefore, the dispute arising from the bill of lading should be submitted to London Maritime Arbitration Committee and the appellee should not bring the litigation in Guangzhou Maritime Court. Moreover, the appellant had brought an action of the same dispute before the district court of the United States on 23rd June 2003 and the court issued subpoena to be plaintiff of this case on the same day. The appellee filed the action to Guangzhou Maritime Court in July 2003, which is later in time when appellant filed the action in the United States. Hence, Guangzhou Maritime Court should not entertain the action brought by the appellee against the appellant for the same dispute. Therefore, Guangazhou Maritime court has no jurisdiction over this case and is requested to reject the action brought by the appellee. The appellee Sinochem International Co., Ltd. did not response the appeal.

After examination, this court holds that: the case is about foreign-related maritime litigation, Guangzhou Maritime Court arrested the carrier of the cargo in question—M.V. "Handy Roseland", pursuant to Article 19 of *Special Maritime Procedure Law of the People's Republic of China* and Article 243 of *Civil Procedure Law of the People's Republic of China*, Guangzhou Maritime Court enjoys the jurisdiction over this case. The Decision made by the first instance court that rejected the disagreement proposed by Malaysia International Shipping Corporation Berhad is correct and should be supported. The plaintiff of first instance of this case—Sinochem International Co., Ltd.—lodged the litigation based on the joint tort committed by the two defendants, thus the jurisdiction of this case shall not be bounded by the bill of lading or the contract of carriage of goods by sea. Moreover, though the bill of lading in question is stated that "to be used together with the charterparty", it is not specified which charterparty or the arbitration clause in the charterparty is incorporated into the bill of lading or not, therefore, it should be deemed that there is no arbitration clause in the bill of lading. The People's Republic of China and the United States of America are two independent sovereignties and countries with different legal systems; whether the appellant—Malaysia International Shipping Corporation Berhad—lodged the lawsuit in the court of the United States of America shall not affect the independent jurisdiction over this case as enjoyed by the court of the People's Republic of China. In conclusion, the reason for the appellant Malaysia International Shipping Corporation Berhad to lodge the appeal cannot be established and shall not be supported by this court. Pursuant to Article 152, Article 158 of *Civil Procedure Law of the People's Republic of China*, the decision is made as follows:

The appeal is rejected and the first instance decision shall be maintained.

The court fee of the second instance is RMB 50 to be born by Malaysia International Shipping Corporation Berhad.

This decision is the final decision.

Presiding Judge: Shi Shi

Judge: Liu Meng Lang

Deputy Judge: Zhou Lan Ying